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BLANCHARD, G.R.

ARGUMENT BEFORE THE COMMITTEE ON INTER-STATE COMMERCE

RAILWAY POOLS.

ARGUMENT

BEFORE THE

Committee of the United States Senate

ON

INTERSTATE COMMERCE,

BY

G. R. BLANCHARD.

WASHINGTON, D. C., MARCH 2, 1894.

Containing also bills now pending in the Senate and House relating to the same subject.

SENATE COMMITTEE ON INTERSTATE COMMERCE.

SENATORS—MATTHEW C. BUTLER, . . SOUTH CAROLINA.
ARTHUR P. GORMAN, . . MARYLAND.
CALVIN S. BRICE, . . . OHIO.
EDWARD D. WHITE, . . LOUISIANA.
JOHNSON N. CAMDEN, . . WEST VIRGINIA.
WILLIAM LINDSAY, . . KENTUCKY.
SHELBY M. CULLOM, . . ILLINOIS.
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ARGUMENT AND EXAMINATION

OF

G. R. BLANCHARD

BEFORE THE

Committee on Interstate Commerce

OF THE

United States Senate.

WASHINGTON, D. C., March 2, 1894.

The committee met at 10:30 o'clock a. m.

Present: Senators Butler (Chairman), Gorman, Camden, Lindsay, Cullom, Wilson and Higgins.

The Chairman. Mr. Blanchard, whom do you represent?

Mr. Blanchard. My official position is Commissioner of the Central Traffic Association, at Chicago, but I represent only my own views.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: February 11, 1879, I had the honor to appear before the Senate Committee on Commerce to discuss the Reagan Interstate Railway Bill, then pending, at which time I said, touching pools:

> "To the paragraph prohibiting joint contracts I oppose the logic of the last ten years with all their contests and receiverships, the almost unanimous sentiment of the thoughtful mercantile public and the belief of every railway officer whose opinion is worth the consideration of this committee, that such railway contracts, being restricted in this country as to excessive charges by its water routes, are intended to and will secure the public against discriminations, are, in a national, corporate and individual sense, desirable, and that they offer a better panacea for mercantile ills than the provisions of this Act."

These words, true then, are true of to-day.

Of the fifteen years since then, eight were given to discussing the problem, culminating in Senator Cullom's able committee, its report, and its proposed law. That report indicted our rail-

way system on eighteen counts, three relating to excessive rates, eleven to discriminations, the others to capitalization, management, freight classifications and engaging in extraneous business.

There is no present issue touching the reasonableness of our average rates, now but little more than one-half those of '79, and which averaged in '92 but 73 per cent. of the lowest foreign average—Prussia.

Extravagance in management warrants no present comment. Railways have substantially abandoned extraneous business and classifications have been and are yet being merged.

That committee said:

> "* * * * The most important, and, in fact, nearly all of the foregoing complaints, are based upon the practice of discrimination in one form or another."

Therefore the Act then introduced dealt mainly with that issue, but the committee said of its own bill:

> "That a problem of such magnitude, importance and intricacy can be summarily solved by any master-stroke of legislative wisdom is beyond the bounds of reasonable belief."

Seven years have tested the Act as it was changed by Congress, and both sides should now know and fairly state its results.

Faulty as it has proven, I think some benefits have come from it. It met with unequal support, because a benefit in New York might prove a hardship in the Carolinas or Wyoming, etc.; but it has secured more publicity of rates, lessened rate wars and resulting trade disturbances, has corrected some undue discriminations between long and short rates, has silenced much unfounded clamor against railways, has induced more uniform railway procedure in instances, has induced more consideration of the inter-relations of localities, and its police or warning powers—as intelligently administered as practicable by a legal body from which railway men were excluded—have proven mutually educational, as appears from the fact that less than one-tenth of its findings have been legally contested.

All these results, whether of principle, revenue or cost, are due to the railways. Those who besought the law have not given it like support. In sixty days and at great expense the

carriers changed practices of sixty years, conforming enormous systems to it by methods undisturbing to trade.

Nevertheless, undue discriminations continue, resulting from both secret practices and more recent open contentions. The law has therefore failed in its chiefest purpose. Aside from the magnitude of the task this has been principally because:

First. The law was not intended, as enacted, to protect alike the railways and the public, and is therefore unjust.

Second. It regarded the railways alone responsible for all the conditions it sought to correct, and therefore devolved their correction upon them alone, however much it theoretically applied to shippers.

Third. Its conditions were all mandatory and in no broad sense remedial, and did not create a mutual interest between railways and the governmental commission.

Fourth. It helped to continue the radical error that wasteful railway warfare is legitimate business competition.

Fifth. It held the fallacy that, although rates must be alike via one railway under like conditions, they might or should be legally different upon competing railways under the same conditions.

Sixth. In other aspects it reasoned falsely that rival railways of different facility, financial responsibility, connections, speed and regularity of transit, could obtain equal rates.

Seventh (and most important). It prohibited the joint contracts unfortunately called "pools," which deal only with tonnage and not with rates.

Eighth. Because of its legal failures touching important principles, the last involved in Judge Grosscup's decision at Chicago, the 26th ult., and which have encouraged a growing disrespect and disregard for its provisions.

If the lawyers who amended the Act so erred in their own domain of reason and legal precedents they were clearly more apt to stumble in their transportation conclusions.

These causes and errors did not exist with the Cullom Committee so much as in Congress, but because they exist the law clearly requires comprehensive reconstruction.

Its failures proceed largely from its refusal to authorize joint contracts, concerning which that committee said:

"The committee does not deem it prudent to recommend the prohibition of pooling."

and:

"The ostensible object of pooling is in harmony with the spirit of regulative legislation."

It farther said:

" * * * * * in any event, the evils to be attributed to pooling are not those which most need correction, and, if agreements between carriers should prove necessary to the success of a system of established and public rates, it would seem wiser to permit such agreements rather than by prohibiting them to render the enforcement and maintenance of agreed rates impracticable. The majority of the committee are not disposed to endanger the success of the methods of regulation proposed for the prevention of unjust discriminations, by recommending the prohibition of pooling, but prefer to leave that subject for investigation by a commission when the effects of the legislation herein suggested shall have been developed and made apparent."

These wise conclusions come from their larger knowledge of the subject. They interrogated 149 persons regarding pools, discriminations, rebates, uniformity and stability of rates. Twenty-four were railroad men, twenty were or had been railroad commissioners, sixty-one represented mercantile interests, sixteen farmers, nine manufacturers, seven lawyers, etc.

Fifty-five opposed pooling, presumably leaving ninety-four unopposed. Forty-two favored pooling generally, twenty-six the legislation of pools, forty-one, pools governed by law, and fifteen were indefinite.

None who opposed them offered adequate substitutes, nor have any been suggested in Congress or elsewhere.

Senator Higgins. Can you say the law gave the railroads no help when it provided penalties?

Mr. Blanchard. Penalties were a hindrance and not a help. They incited secret and undiscoverable methods.

Supporting my first contention, that the law does not protect or assist railways, I cite the text of the Act, the exemption of parallel water carriers, the prohibition of the right of contract, the penalties visited upon the railway officers; that no concession was asked from the public; that it required the reduction of way rates and therefore a reduced average of all rates, that the railways were alone charged to correct the preferences and

wrongs caused by some shippers; to guard themselves against the undue practices of rivals; and withal protect their own well meaning patrons. It treated a disease declared to be serious and forbade the use of the best remedy.

It was as if a national medical congress had disregarded the reports of sanitary experts and said to a hospital of suffering patients: "We enact that you shall cure yourself, but you shall not take the remedy which our experience and yours has proven most curative."

It was impracticable prohibition, not practical prevention. It prohibited, yet it outlawed the best measures to prohibit or prevent. It incited antagonism instead of aid.

Next, it held the railways alone culpable. The following facts fully disprove that assumption.

In 1893, 182,575 false descriptions and weights of goods were detected and corrected on west-bound shipments from New York City, Boston and Philadelphia only, with only one month at Boston.

Senator Higgins. By whom were the misdescriptions detected?

Mr. Blanchard. By the railroads.

Senator Higgins. What do you mean by "misdescriptions?"

Mr. Blanchard. If oil-cloth is classified third-class and Irish linen first-class, boxes are described as containing oil-cloth which really hold linen. All those misdescriptions were intentional except in few instances where some article was not classified and might have been honestly classed by the shipper by what he deemed its nearest analogy.

Senator Cullom. When did this occur?

Mr. Blanchard. In 1893.

Senator Higgins. Those were efforts on the part of merchants to cheat the railroads?

Mr. Blanchard. Yes.

Senator Higgins. Is the inspector the inspector of the railroad company?

Mr. Blanchard. Yes.

The Association I represent also collected net in '92 more than

eight times its entire expenses by the discovery and correction of devices to evade legal tariffs and regulations.

Senator Higgins. Was that in the case of one railway?

Mr. Blanchard. The first instance involved all the westward railways from three points, Boston, Philadelphia and New York; the second our western lines.

Senator Cullom. How does your Association get at the facts about these cheating operations?

Mr. Blanchard. From daily reports.

Senator Cullom. How do you learn the facts?

Mr. Blanchard. By inspectors at the stations, and opening packages when necessary.

Senator Cullom. That is what I wish to know.

Senator Camden. You do not represent a single railroad?

Mr Blanchard. No; I act for associated railways.

The Chairman. Where do you make the examinations, at the point of shipment or at the point of delivery?

Mr. Blanchard. At both, where westbound goods are received inspectors are stationed. As goods are taken from wagons, if there be reason to think deception has been practiced, the boxes are opened, perhaps in the presence of the cartmen who represent the forwarders. In other instances we inspect when property is unloaded, as we can not pay inspectors at all small points where freight is loaded.

Senator Cullom. It is a sort of customs inspection.

Mr. Blanchard. It resembles the United States customs inspections. We find that we have also protected other property and our own by finding concealed explosives, acids, etc., in boxes otherwise described. For further example, our classification makes brass pipe fittings one rate and iron pipe fittings a class rate lower. I knew of a box in which there were but two pieces of iron, all the others brass, yet it literally contained iron pipe fittings. Some merchants thus evade their due obligations to carriers, reduce our rates, say fifteen per cent, and take trade from honest persons who truly describe their goods.

I recently knew of a car loaded apparently with lumber. When the inspectors stripped the lumber off the top, they found dry goods underneath.

The Chairman. Did the shipper represent that the car was loaded with lumber?

Mr. Blanchard. Yes.

The Chairman. While in fact it was loaded with dry goods?

Mr. Blanchard. Dry goods in the inside surrounded with lumber. I was advised of a case where a cask was shipped as containing chains. The cask fell off the platform, disclosing fine English cutlery, the difference in value being, say $400, if we had lost or damaged it.

Senator Higgins. Is that the value of the freight or does that represent the freight charges?

Mr. Blanchard. The value of the goods. Such cases arise often, yet railroad companies are generally held to be the sole malefactors.

Senator Higgins. I should like to ask whether the Grand Trunk and Canadian Pacific Railways are in the Association?

Mr. Blanchard. The Canadian Pacific is not, but its American connections are. The Grand Trunk is.

Senator Higgins. Do you subject cars coming over those railroads when they enter American territory to such inspection as you have described?

Mr. Blanchard. Yes, and it is due those companies to say that they support us in this respect.

Senator Higgins. Do you find as much cheating coming from that side of the line?

Mr. Blanchard. I could not say.

Senator Higgins. Do you find some cheating?

Mr. Blanchard. Of course.

Senator Higgins. Does your inspection, which is thus made for the purposes of protecting your own freight rates, ever detect violations of the customs laws?

Mr. Blanchard. We have nothing to do with the customs.

Senator Higgins. Is there no report of that made to you?

Mr. Blanchard. No. All the goods we carry that are subject to customs are transported in bond, and are delivered by and to the customs officers, who look after those questions themselves.

Senator Higgins. You do not break the seals to inspect the cars in those cases.

Mr. Blanchard. No.

Senator Higgins. Do you have your inspectors at the custom houses?

Mr. Blanchard. No; but the customs' authorities certify what goods shipments are. They usually take the place of our inspectors in that respect, but we do not always have the co-operation from them which is desirable.

Referring to my first statement, I ask what public clamor would ensue if the same railways had reported at the same points 182,575 discovered instances in one year of similar devices against well-meaning shippers and honest carriers? No trade association is known to have taken steps to stop them or the receipt of illegal preferences by its members, or to protect their own members who do not receive them, or the railways which decline such payments.

Senator Cullom. Did they ever do anything of the kind before the law was passed?

Mr. Blanchard. No, and probably they never will.

They forbid reducing their own commission, storage, insurance and other rates and their members are disciplined who cut them, yet they most bestow their tonnage upon railway agents, members of the same bodies, who violate their rate agreements and the law by drawbacks, and esteem their fellow members justifiably acute and fortunate who secure them.

Railways rarely pay unsolicited rebates, and the ceaseless applications for reduced rates in preferential forms would surprise this committee. An amount of importunity, adroit intimation and threats to divert business are resorted to, which devolve upon well-meaning carriers, not mere moral resistance but the loss of business, the protection of well-meaning shippers and a watch upon more pliable lines. If one carrier ignores persuasions which another has conceded, and perhaps necessarily, and thereby loses business, the first becomes more disposed to yield to like importunities upon continued diminutions of its traffic, no aids to permanent resistance being furnished by the law.

A railway manager may, therefore, duly control his own

agents, but he, his share-holders, his agents, his treasury and his patrons are at the mercy of agents of other companies more fully than if they were his own. Given thirty eastbound agents in Chicago, twenty-nine would eventally be compelled to adopt the cuts of one upon competitive tonnage or suffer its loss.

How, therefore, can honest forwarders and railways relying mutually upon printed tariffs only, retain, secure and equitably divide business. We may moralize, commissions may warn and attorneys may prosecute, but the law has not cured the causes, nor will mere theories of prohibition do it, which have failed in countries of lesser complications. Give railway companies interests and incentives to act effectually with the commission. Legalize joint contracts which will lessen concessions and unreasonably reduced rates to shippers in order to get their business, enable them to get tonnage from their associates at reasonable equal rates, which at the same time require shippers to pay like charges for like service, and you will take the first mutual and practical step to make the law effective and respected.

All efforts to stop discrimination have failed and will fail unless accompanied by authority and effort to divide traffic in equitable parts between rival carriers.

I contend next, that the law falsely theorizes that railway strife is legitimate trade competition. No greater fallacy can exist.

Cut rates are not justifiable carrying competition more than are sales of bankrupt or damaged stocks at auction legitimate business competition.

The Interstate Commission said in its first report,

> "Excessive and unreasonable competition is a public injury."

The Senate Committee of '86 said, in reviewing like conclusions reached by the Parliamentary Committee of 1872, that

> "Its lessons were especially valuable in at least bringing about a general recognition of the fact that the relations between the railways and the community require special treatment and cannot be defined or governed in accordance with the natural laws regulating ordinary commercial intercourse."

Mr. F. J. Firth, of Philadelphia, has ably said:

> "Unrestrained competition develops dishonest and unlawful practices, places trusts and monopolies in positions of vantage as compared with individual shippers, business is forced into large competitive

centers to the ruin of smaller towns and the business interests of the country at large."

I quote Honorables Allen G. Thurman, Elihu B. Washburn and Thomas M. Cooley, in reporting upon differences in freight rates to the seaboard cities in 1882.

"A species of railway competition has prevailed from time to time, which has brought satisfaction to but few persons and which has resulted in inequalities and disorders greatly detrimental to trade. The mere statement of these results is sufficient to show that this is not what in other business is known and designated as competition. Competition is the life of trade, but this is its destruction."

They also said:

"* * * * in the sort of competition we have mentioned it is found that the bankrupt corporation has the advantage, for its managers, having nothing to lose, may offer rates which solvent railroads cannot meet without being dragged into bankruptcy with them * * * It is a state of things that, like a war between nations, from its very destructiveness, cannot be a normal condition, but must speedily terminate in peace or disaster."

Senator Higgins. What occasion had those gentlemen to make such a report?

Mr. Blanchard. They were appointed by railroad companies in the contention of Mr. Vanderbilt against the Pennsylvania and Baltimore and Ohio Companies that rates from the west to Philadelphia and Baltimore were unduly below those to New York.

Senator Cullom. And they fixed differential rates?

Mr. Blanchard. Yes, the difference between New York and Baltimore had been usually five cents on grain. Upon the report of these gentlemen it was reduced to three cents, etc.

Mercantile axioms have small application to railway charges. Commerce involves speculative elements and risks losses in hopes of profit. Railway rates must not be similarly uncertain or speculative, but as far as practicable must be public, stable, uniform and reasonable. Beyond those proper conditions the public and law have no concern whatever with what is done with their proceeds.

Prof. Hadley, of Yale, said on this point:

"To the business community, regularity and publicity of rates are more important than mere average cheapness.

Business can adjust itself to higher rates easier than it can to fluctuating ones."

The great English Commission of '72 said:

"While Committees and Commissions carefully chosen, have for the past thirty years clung to one form of competition or another, it has nevertheless become more and more evident that competition must fail to do for railways what it does for ordinary trade."

It also said:

"* * * * reliance upon competition between railways to regulate rates and maintain them upon a fair basis and to prevent unjust discriminations will have to be abandoned as a failure."

The Cullom Committee of '86 said:

"Competition does not prevent personal discrimination, for the evil is most conspicuous when and where competition is most active."

A trite illustration supports these authorities. Given two competitors in trade. When one fails he retires from rivalry. Given two rival railways. When one fails it continues in business and is often deemed by its successors, its competitors, and usually by the public, as then best equipped to grant the lowest rates, being the one business which may be increased upon insolvent capital. One railway, moreover, should be prevented from depleting the revenues of others under the veneer of competition carried to points which injure competing investments under good management. It is at least a reasonable duty of legislation to aid the latter to proceed against such companies if they have agreed to maintain reasonable rates and equitably divide the tonnage forwarded thereunder.

In a volume published in London in 1891, W. M. Acworth said of so-called American railway competition:

"Let this one fact suffice. Between Chicago and Cairo, a distance of 365 miles, there are twenty-two railway companies whose lines cross that of the Illinois Central. Eighteen out of these twenty-two have passed into the hands of receivers since 1874."

It is widely believed that a pool which corrects this misnomer for competition is a combination to advance rates and stop real competition.

I contend that after rivers, lakes, oceans and economic forces have spent their combined natural and national powers in determining rates which are reasonable, such rates cannot be made excessive by combination nor should they be reduced by contention.

The natural factors of due competition, too strong to be ignored by artificial combinations, are

First. The competition of unregulated water-ways, both natural and artificial and combined with each other.

Second. The competitions of producing districts, as Kansas with Minnesota and manufacturing centers, as Chicago with St. Louis, Philadelphia with Lowell, etc.

Third. The competitions of domestic selling markets for export and domestic trade, as Boston with Baltimore.

Fourth. The rivalries of nations, such as Russia, India and the Argentine Republic with the United States in the production and sale of the same and competing cereals in European centers, thereby more affecting our exports.

Fifth. Because all these conditions find combined expression through rival shippers, singly and in trade bodies to prevent increases and secure reductions of rates, and through numberless agents who concede even more than actual conditions justly require.

Sixth. Because managers adjust their charges to move the largest tonnage at low rates rather than smaller amounts at higher rates, and thereby develop increased travel and freight at local stations at more profitable local rates.

All these causes unite with such power that no enterprise is subject to as many limitations as railway transportation in this country. When they determine our rates they are reasonable, and we are entitled to charge and retain them unless reductions therefrom are justified by other reasons.

Cuts from other causes are losses and wastes of reasonable incomes, to which no one is entitled. Rates are then no longer reasonable as required by law for there is equal unreason in undue low and high rates.

Senator Higgins. Your argument as to points of water competition applies, I presume, only to that class of lines and not to those where there is not water competition.

Mr. Blanchard. I will illustrate how legitimate water competition is carried by voluntary railway action to points waters do not reach. East of the Mississippi River and north of the Ohio the long and short haul clause prevails. Even when open through rates are, from any cause, unreasonably low, they are simultaneously reduced between all intermediate points, of which west and the east, there are over 6,000.

If the grain rate is ten cents per 100 pounds Chicago to New York, it would be twelve cents locally to Boston and seven to Baltimore, and all local rates between Chicago and those cities would be reduced to those *maxima*, regardless of the fact that most of the traffic would be taken from local starting points and delivered at local destinations where no water competition existed and if it did, the railway carriage would, in such event, be the cheaper. For example, there is no water competition from Springfield, Ill., to Harrisburgh, Pa.

Thus, in effect, we take the Great Lakes, the Erie Canal and St. Lawrence, Mississippi, Ohio and Hudson Rivers, etc., to the western corn crib and to eastern stores. If such traffic were pooled it would not advance such rates.

Senator Higgins. For instance, the Pennsylvania Railroad, in order to get its share of the traffic from Chicago, say, to Boston or New York or Baltimore, will give the advantage of any equally reduced rate from the corn crib wherever it may be to Chicago?

Mr. Blanchard. Let me answer by an actual instance. Under our scale system, points outside a radius of say 100 miles east of Chicago, take less rates than from Chicago. At Fort Wayne, it is 90 per cent. to New York of the rate Chicago to New York.

Senator Cullom. You divide the country into districts?

Mr. Blanchard. Yes. Each point or group of points has a proper percentage of the rate Chicago to New York. If we reduce the grain rate from Chicago to New York to ten cents, the rate to Erie, Buffalo, Pittsburg, etc., would be say six cents, and from those points to New York about the same. The rate therefore works to both purposes and in both directions. At points further from New York than Chicago, the rates increase. Mississippi River point rates are 116 per cent. of Chicago rates and ten cents Chicago to New York means without law or waiting eleven and a half cents from East St. Louis to New York, and so on, although there is no compelling water competition.

All the intermediate rates go down simultaneously in such cases without regard to actual water competition. They may occur —as last December—when waterways were closed. The due competitions I have recited presented no new forces or phases then,

because all the equities had operated fully when the prior standard rates were reached. It represented a state of wrong, losses, readjustments and railway profligacy which benefitted mainly foreign buyers.

There being therefore no such comprehensive, flexible and cheap rail transportation on earth as ours, and none which so much needs correction, we are entitled to have it somewhat protected by you.

Judge Cooley said in the Omaha case:

> "Nothing seems plainer than that, *under the law as it stands*, the protection of carriers against destructive rivalry and rates that lead directly to bankruptcy must be found chiefly in prudent management, in the cultivation of reasonable relations among themselves, etc." * * * *
>
> "Every change in rates affects values, it disturbs trade and alters to some extent the value of contracts. The general public is therefore interested in rates being steady and a cut in rates for a time * * * * may, when all its effects are taken into consideration, be found to be more harmful than beneficial.

Prof. Hadley well said:

> "We are thus reduced to the simple alternative—pooling or discrimination. Each effort to prohibit both at the same time, only makes the necessity more clear. The governments of continental Europe have ceased to struggle against it Rightly judging that discrimination is the main evil, they recognize pools as the most effective method of combating them."

Chairman Cooley said further, in the same Omaha case:

> "If a rate when made by one company as a single rate would in law be unobjectionable, it would be equally so when made by several as a joint rate. The policy of the law and the convenience of business favor the making of joint rates, and the more completely the whole railroad system of the country can be treated as a unit, as if it were all under one management, the greater will be the benefit of its service to the public and the less the liability to unfair exactions."

The act is next fallacious because it requires through rates to be alike on one railway but stimulates different rates upon competing railways.

When a new railroad competes for tonnage formerly enjoyed by others, it warrants at least former reasonable rates if not an increase, to compensate for the reduced business of each. The practice has wholly differed. The newer and therefore usually weaker line, generally diminishes the traffic of the older routes by reduced rates often made necessary by its untried and comparatively deficient facilities and the indisposition of shippers to give it freight at equal rates.

Nevertheless, if public policy requires one line to charge like reasonable rates to all, why should dissimilar rates prevail over different lines for a like service? If the all-rail rate on grain Chicago to New York be twenty-five cents per 100 pounds via some routes and fifteen cents via others, the preferences forbidden by the act ensue both to individuals and localities precisely as if the same dissimilar rates existed simultaneously on one railway.

If each of ten lines eastwardly from Chicago should issue different yet legal rates, ranging from twenty-five cents to twelve and a half, it would not only demoralize trade there, but at local points under the long and short haul section, and just protests would be made by all of them.

On the other hand, all railways cannot secure equal freight rates any more than equal passenger fares, and yet secure the portions of traffic to which they are justly entitled as chartered, and therefore presumably needful instrumentalities of commerce. Briefly then, the government denies us the right to distribute the traffic; some railways and shippers are interested to prevent it, other shippers are justified in not doing it, weaker lines will not remain idle and strong lines cannot permanently ignore their action.

Concealed methods therefore prevail, resulting in non-agreed instead of agreed shares of carriage, and non-agreed instead of agreed actual rates. Have not these seven years clearly demonstrated that it is more to the public interest that stronger lines concede reasonable portions of their larger tonnages to weaker lines if uniform reasonable rates are thereby maintained than that we be longer legally prohibited from giving or receiving tonnage, such prohibition having undeniably produced the very differences and preferences, open or hidden, or both, forbidden by the law?

Judge Cooley said to a convention of State Railway Commissioners in Washington, May 28, '90, as to British Railways:

> "It may seem altogether proper that the government should make or permit to be made some provision whereby the comparatively feeble road may be supported, not entirely by the resources of the district which it serves, but to some extent also by a tax upon the

business or the resources of other roads. A provision to this end is not uncommon.

The idea is that any road that the government provides for, the government will be allowed to be legitimately supported with the aid, if need be, of the stronger roads."

The second annual report of the Interstate Commission said:

"If it is important to the public that a railroad once constructed should be maintained, the ability to make any charges that will render its maintenance possible is also of public importance. When, therefore, the rate sheets are such that reasonable returns are not probable and public injury is threatened, and the injury is accomplished when the natural result of bankruptcy is realized * * * * it will generally be found that reasonable rates, adjusted equitably over the whole field of service, would have been as much better to the community as to the carrier itself."

The present condition was amply foretold to Senator Cullom's committee, conceded by it, and then turned down legislatively as the expressions of railway aggrandizement and alarm. We should dismiss theories now and respect these old facts and the new ones.

The act is now afflicted with progressive paralysis and needs urgent and quick remedies if it is to stand and go.

Stephenson, the younger, said to a Committee of Parliament:

"We do not impute to Parliament that it is dishonest, but we impute that it is incompetent. Neither its practical experience nor its time, nor its system of procedure is adapted for railway legislation.

What we ask is knowledge * * * * *All* we ask is that it shall be a tribunal that is impartial and, that it is thoroughly informed, and if impartiality and intelligence are secured, we do not fear of the result."

Senator Cullom. Would you favor making the Interstate Commerce Commission or any Commission, a court?

Mr. Blanchard. No.

Compare, Mr. Chairman, the non-discriminations, uniformity and stability of higher foreign rates with ours, and, if we heed them, we must conclude that the chief trouble proceeds from our disregard of juster foreign legislation.

At this point if the Committee will permit, Mr. Counselman requested me to make an explanation on his behalf, feeling that he had not quite made himself clear when he said the recent reduction in rates from Chicago to New York injured western farmers.

Mr. Cowen. Some of the members of the committee did not hear Mr. Counselman's proposition, and possibly you had better repeat it.

Mr. Blanchard. On the 2d of last December one company, believing that rates were being cut by the concealed methods of others, openly reduced the grain rate from Chicago to New York from twenty-five to twenty cents.

Further reductions followed until the rate reached fifteen cents, a lower rate in midwinter than has existed by rail in midsummer since the law took effect. Those reductions were all open and legal and the Interstate Commission was duly notified, but the various reductions and the subsequent advance produced about as many discriminations as if they had been concealed.

Mr. Counselman meant to say, in answer to questions asked by the Honorable Senator from Delaware (Mr. Higgins) and the Honorable Senator from New Hampshire (Mr. Chandler) as to the effect upon western farmers, that such reduction injured them. He said that 5 cents per 100 pounds is 2.8 cents, upon a bushel of fifty-six pounds of corn, and that the New York and eastern markets fell about that much when the freight rate from Chicago to New York was reduced 5 cents, thereby affecting not only all corn in transit but also in store at the seaboard. Therefore the farmer could not sell his property en route or in store except at, say 2½ cents per bushel less. He wished to make it clearer that instantly the price of corn in New York went down 2½ cents, the price of corn in Chicago, St. Louis, Kansas City, etc., went down as much, including also grain stored at those points, but the freight charges *west* of those points *not* being reduced, the western farmer who desired to ship and sell his grain or who then had it in store at those places, must necessarily have accepted 2½ cents per bushel less for his property.

Mr. Cowen. On the reduction of 5 cents in freight from Chicago to New York?

Mr. Blanchard. Yes, and at every station from Arkansas to Minneapolis. When the rate went down 10 cents the farmer's loss was increased if he sold. Commercial causes may have operated to arrest some portion of that reduction, but the market did not recover its former price when the rates advanced.

Senator Cullom. A farmer told me the other day when I re-

peated that statement to him that in his case the effect had been entirely different; that he had been able to sell his corn during the reduction of rates and had not been able to do it before.

Mr. Blanchard. Then the loss, as Mr. Counselman explained, was made by himself instead of the farmer and by the railways.

In the discussion of this question before the House Committee last year, I thought pooling was not made clear, and I would now like to make it so.

An experienced transporation associate has well said:

> "The aggregate competitive business must be divided under some plan between the parties claiming interest in its result. The question is, shall the plan be dishonest, private, preferential and unlawful, or shall it be honest and public without unjust discrimination and in accordance with the law? At present it is the former. It may be the latter."

In the debate of '86, Senator Platt, of Connecticut, defined a pool sharply as:

> "simply an agreement between competing railroads to apportion the competitive business."

Prof. Atwater, of Princeton, accurately described pools as agreements among railways

> "for each to accept as its share of the competitive business, at a moderately remunerative rate common to all, what shall be judged to be its just proportion by an umpire or board selected by them all to make the apportionment."

Here I wish to draw a clear line of contrast between pool agreements and rate agreement.

Some agreements must and will be made as to classifications and rates. Otherwise how can we know what to charge our patrons? How will shippers and consignees know what to pay? What will they cable abroad? How give publicity and how file tariffs as required by law? A pre-determination of rates by the best methods of experience is, therefore, a railroad, commercial and legal necessity. What would shippers do if no man knew his rate until goods were brought to shipping stations requiring that they bargain there in each case for varying prices of freight carriage or personal travel? There must not only be reasonableness but readiness and foreknowledge. Hence some form of association is essential if for that purpose only. All this must

be done whether there be pools or not, but a pool is a subsequent function.

Senator Higgins. Does or does not the pool fix the rate?

Mr. Blanchard. It does not. I cannot state this too clearly or frequently.

The Chairman. Let me ask you a question in order to make that statement perfectly clear. I understand the system of pooling simply amounts to a distribution of the tonnage of the various companies.

Mr. Blanchard. That is all.

The Chairman. Under the system which you have just suggested there is an umpire to determine what proportion should go to each road, the matter of rates not being affected at all.

Mr. Blanchard. That is correct unless the roads agree without such umpire.

Senator Lindsay. Do the pools distribute the tonnage or the receipts from the carriage of the tonnage?

Mr. Blanchard. Both, as I will explain. Every pool agreement of which I have had knowledge first consolidated substantially the facilities of the united railways as if they were one enlarged company carrying the tonnage of the community as one firm. They especially replaced one line with others in time of strike or casualty. As to the details of a pool, and responding possibly to your thought: Pool agreements are separate, independent of and different from agreements upon rates, because pools are intended to be permanent and to continuously divide the tonnage or earnings, or both, of the agreeing railways in agreed or awarded proportions whatever the rates may be, or however they may change. The rates themselves are never stated in pool contracts. Much of the present discussion is therefore, immaterial, and should be addressed to the rates themselves and not the division of tonnage after rates have been determined. We do not propose to change any normal tariff rates and you can have general assurances to that effect. If such tariffs are unreasonable now, they have been so since the law and you should address that fact. In other words the standard tariff grain rate from Chicago to New York has been continuously twenty-five cents. By change of two and one-

half cents it has been down to fifteen cents, and by jumps, back to twenty-five cents and is down to twenty now. If those changes existed under pools not a line of any pool contract would be changed, because settlements would be made either in tonnage or money, according to the tariff rates variously charged. Does not this explanation dissipate some of your doubts as to the functions of pools? They sustain rates but do not make them.

When a pool has been agreed to be formed, the parties thereto next meet and consider the statistics of the like traffic of each and all for agreed prior periods.

From such data they agree to divide the total tonnage into portions usually represented by periods when the best or uniform conditions prevailed, perhaps made uniform when all granted cut rates. If managers disagree and the apportionment is arbitrated, the same data are laid before the arbitrators. We believe in submitting railroad questions to railroad men. government refers army subjects to a board, it is an army board; if relating to the navy, to a navy board, and to courts and counsel for legal questions. In the case of the Interstate Commission, such policy did not prevail. I asked the president of the Ordnance Board of the Army last night what he would think of a national law which permanently required that a board of lawyers, exclusively, report upon the fortifications and armament of the country. With due deference to our law-makers, railroad men believe that having conceded legal participation upon a Railway Commission we should have railway representatives there also.

Assuming, then, that percentages have been determined for the participating railways, they thereafter severally report their tonnages to a pool officer, who states the equated monthly results to each company, showing how much each may have carried over or under its allotment. The companies in excess are then asked to deliver to those in deficit an equivalent of tonnage, or, if money, it is computed upon some agreed basis.

Let us assume that the Lake Shore Company is awarded 15 per cent. of the total east-bound tonnage from Chicago, but at the end of a month it has carried 17 per cent., although in my experience with normal conditions I have seldom known a company to exceed its legitimate proportion that much.

The Chairman. What do you mean by 17 per cent?

Mr. Blanchard. Seventeen per cent of the total tonnage carried eastwardly from Chicago by rail. Suppose, therefore, 17 per cent. of a total of 250,000 tons; 2 per cent. more than its proportion would be 5,000 tons. The Lake Shore Company would therefore be asked to deliver—say to the Pennsylvania and Baltimore & Ohio Companies—2,500 tons each. Such transfers assume the willingness of shippers to have their wares go over routes other than those first chosen by them. Diverted business is usually unconsigned traffic, about which shippers have expressed no preferences. Suppose shippers decline assent or that the excess is in tonnage consigned to New England and the Baltimore & Ohio was short. New England tonnage can not be transferred from the Lake Shore and New York Central to the Baltimore route because of geographical obstacles. The latter company, therefore, may say, "We are willing to accept money. You have carried this traffic at the full tariff rates. Pay the excess to us, and when we are over we will refund to you." It thus equalizes, and but little money ultimately passes. It is rather a proof of good faith. Is it not more the public interest that railroads over-pay over, say 2 per cent. of their money derived from reasonable, stable and non-preferential rates than that all refund larger secret rebates, which ultimately touch most of the competitive traffic and which end in transfers of a less tonnage and loss and wrong to every interest involved.

While I administered the eastward pools at Chicago, East St. Louis, Peoria, Cincinnati, Louisville and Indianapolis the average difference of tonnage or money transfers was not greater than approximately 4 per cent. over or under the percentage of any given company, so that in, say $12,000,000 per annum, the transfers of tonnage or money were approximately $300,000, paid by all companies. What one company paid in one month it perhaps received back in the next. What possible interest had the general public in these methods and results except to allay its conjectures of wrong?

The Chairman. That represents the sum of money that actually changed hands among the railroads?

Mr. Blanchard. Yes, approximately, and back and forth, whereas strifes in rates not extending beyond reductions of 10

per cent. would have paid $1,200,000; but such contests never stop at 10 per cent. when cutting gets started. Have I answered Senator Lindsay's question?

Senator Lindsay. Yes.

Mr. Blanchard. It has recently been proposed to obviate money payments as much as possible, as follows: That money deposits be held in trust for, say two months, and if business did not equalize itself in that time that the money be distributed thereafter. In other words, the companies would have sixty days after the expiration of each month in which to voluntarily bring their adjustments within the original conditions, and for traders and markets to equalize.

The Chairman. I should like to ask some questions right there. Is not knowledge as to the arrangement of freight traffic on railroads or any other system of common carriers acquired only after long practical experience when studied by men who devote themselves entirely to that business and nothing else?

Mr. Blanchard. I think so; clearly it is so.

The Chairman. In other words, is it not a very difficult and complicated question to deal with, and can anybody except an expert deal with it?

Mr. Blanchard. It is a large and difficult question and should be dealt with mainly by specialists. My railroad experience began at fifteen years of age, when my father's failure sent me to a freight office instead of a college. Had I gone to college I might have been upon the commission and known relatively little of these great propositions.

Senator Lindsay. There has never been a practical man on the commission?

Mr. Blanchard. No. Judge Cooley came the nearest. He was an honest, very faithful and able man.

Senator Lindsay. Would it be possible to get a competent, practical railroad man to act as commissioner for the compensation paid?

Mr. Blanchard. I doubt it.

This is our greatest public problem. Import tariffs are less difficult, yet you formulate them only after conferences with experts from free trade and protective leagues and from a careful review of prior national policies and experiences. You justly seek to duly and impartially protect various American interests as demonstrated necessary by their expert representatives, and under a broad, uniform and public national policy, but when thus determined the charges are impartial. You recognize only legitimate national and international forces and considerations in making that tariff, and you do not allow goods brought cheaper through New York than Boston, nor at reduced charges for larger quantities, nor encourage preferences between persons and places under the mask of competition.

The standards of those uniform charges become the war cries of parties, but neither democrat, republican or populist dare ask that their uniformity and inflexibility be abated to any one until Congress so authorizes. Why should reasonable public railway charges made upon the basis of like forces and with like care on our part be reduced until a competent authority so authorizes, and why should not Congress give our larger interests equal study and protection?

You can prove our statements, reasoning and results by the reports of the Interstate Commission, by the English Board of Trade reports, by experts here, by the railroad procedure of our States and by every country of Europe. We can not deceive you about our rates per ton per mile and the results. You can get the aggregate and average figures from Poor's Manual and the Financial Chronicle. With equal study and equal credence to our experts and the facts, you would be convinced of our claims to your aid. We do not ask for protection, or even that you equalize our tariffs against European freight charges, as the iron and other interests are doing, but having given you rates greatly below theirs we simply ask to be assisted to collect and retain them undiminished by concealed reductions. Our arguments are too much regarded as appeals of monopolistic capitalists. The Interstate Commission reports for 1892 said that one-fifth of the population of the States depended upon the disbursements of transportation lines. We ask reconsideration because of that fact, because the direct and indirect payments to labor and small investors greatly exceed the emoluments of railway

capital, and because a seven years test of the law has proven our contention true and equitable.

To return to pools:

With over 3,000 shipping points in our association territory there were but seven eastward pools at the pivotal points, but they steadied rates elsewhere. They were the flywheels of the great engine. These seven pools were made by, say twenty initial companies, while in the same territory there were ninety or more railroads, which retained all their rights and powers in determining rates.

With pools from district centers, small points and shippers will be more uniformly benefited under the short haul feature of law and the general railway rate scale before explained. Local points are a majority in number and supply a majority of the tonnage, because of the facilities of through bills of lading and through cars from local origin points to local destinations. Stable through rates between trade centers will therefore also stimulate direct shipments from producer to consumer.

Senator Lindsay. Let me see if I understand you. You say the long and short haul clause is observed so far as the public rates are concerned?

Mr. Blanchard. Yes.

Senator Lindsay. But that when a secret concession is given, the intermediate points get none of the advantages?

Mr. Blanchard. Not as a rule.

Senator Lindsay. They still go according to the published rate?

Mr. Blanchard. Yes, usually. Open reductions of rates extend to local stations, but I do not wish to be understood as saying that concealed preferences are always given to all smaller stations and forwarders. The Committee would find interest in the statement of President Smith of the Louisville and Nashville Company, dealing in part with results south of the Ohio River upon this point.

Senator Higgins. In what paper is that statement contained?

Mr. Blanchard. In a published letter withdrawing from the Southern Association.

Senator Higgins. Will you state whether or not a pool affects freight rates, and if it does, how it does so?

Mr. Blanchard. I have some statistics on that subject also which will appear later on.

Railways can not be legislated to a parity of facility or management nor the public to divide their business impartially, any more than competing ocean steamers and ports. We must be assisted by law, and any law which substitutes theories for such needs and facts and paradoxes for principles, will continue impracticable and void.

We ask but little from the law, and that is, if strong lines concede some of their tonnages to weaker ones, and the deficient lines prefer to thus secure it and thereby maintain uniform rates via both classes of railroads they be legalized in a joint contract to such mutual ends. The joint plan will sooner make the weaker lines more efficient and more disposed and able to adhere to tariffs; forwarders may enjoy the use of the stronger routes at equal rates if they desire, and all lines will be enabled to make economies which will better satisfy them that the very low present standard of rates is reasonable.

Moreover, if small shippers assent that their tonnage be used to thus equalize joint agreements, knowing that their concurrence assures them a parity with larger forwarders and localities, it is an added and potential argument. The largest shippers now get the best terms while those who most need those terms are the smaller forwarders. They should at least secure equality. Such joint contracts will therefore best remove all participants, large and small shippers, localities, railroad companies, and contending agents, from undue motives and methods now forceful, stop the selling or buying of transportation for less than its due worth, and best and quickest secure the non-discriminating parity which is the chief desideratum of the law.

There is another phase of the question which the future may press upon our consideration.

Our accumulations of surplus grain and the need for foreign markets of sale against other sources of production may make it a desirable national policy to authorize the carriers to take it from western farmers to shipping ports at rates less thereto than those charged to residents thereat. It is difficult to see how

this might harm our major interests. The carriage of this traffic, its distribution among various lines and ports, the preservation of rates and due differences of rates to competing ports, could all be best accomplished by the equalizing procedure of pools.

In view of all my premises, I now repeat three questions, never yet satisfactorily answered:

What concern have others in the proportions in which parallel carriers divide between themselves the proceeds of reasonable and legal rates?

Wherein lies more danger from pooling traffic taken at reasonable rates fixed independent of pools as now, more than in maintaining the same rates by other and permissible agreements?

In what particular has the prohibition of pooling advanced the public interest?

The Interstate Commission said in its first report:

> "The scheme of pooling rates or the earnings from traffic was devised and put in force * * * * as a means whereby steadiness in rates might be maintained."

Senator Higgins. Has not a great deal of the antagonism to the principle of pooling which you propose, arisen from the mistake of the public in supposing that pooling means the fixing of rates?

Mr. Blanchard. Yes; quite true.

Senator Higgins. There is a general delusion on that subject in your opinion?

Mr. Blanchard. Yes, and strangely universal. That is why I have so strongly endeavored to separate the two propositions.

It may be confidently asserted in this connection from the witnesses before the Windom and Cullom Committees, as well as more who would now concur, that if railway patrons were alone consulted, the proposals to secure equal rates by joint railway contracts duly legalized and regulated, would be overwhelmingly adopted. The negatives would come mainly from those who have enjoyed preferences, those who believe they can continue to secure them despite the law, those who hope to receive them

or those who are unable to compete fairly in business without them.

Important support of these averments and the pending proposal is furnished by a recent report of five gentlemen to the Boston Associated Board of Trade, from which I quote the following:

> "In 1893 the matter (pooling) was referred to the Interstate Commissioners by the United States Senate, with the request that they should further investigate the subject, and report their findings and suggestions. The following circular was issued to all ne commercial bodies, and various parties conversant with transportation matters for their reply and suggestions:
>
> DEAR SIR:--Will you kindly address a communication to the Inter state Commerce Commission giving your opinion as to whether it is practicable, and, if so, advisable, to amend the fifth section of the act to regulate commerce so as to legalize such contracts between competing roads as would tend to diminish unlawful discrimination stating the form of amendment that you think will best accomplish such result. Your paper will be confidential as to its source, if you desire, but we prefer to be at liberty to give it the authority of your name. A reply as early as practicable is desired.
>
> Answers were received from large numbers, representing all the classes alluded to, and the result was that 89 per cent. now favored either the abrogation of the clause prohibiting pooling or the entire repeal of the Interstate law, and 11 per cent. did not favor the elimination of the clause."

If, instead of now enacting such and other indorsements into law, the present act be only so amended as to impose more penalties for violations, transgressions will continue adroit and proofs even more impossible to obtain.

The railways which, necessarily or preferably, grant preferences, and forwarders who receive them, will not stop their use. Suffering shippers will not allege discriminations because of lack of legal proofs, and because they hope for and may secure like benefits from the same or other railways.

Competing railroads will not accuse rival lines nor shippers, because of similar lack of legal evidence, because such charges would permanently alienate patrons, and because it is not consonant with high honor.

Another consideration I strongly urge is, that the public is not entitled to less than reasonable rates, especially when obtained by combination or device, or from a yielding carrier; if the public should be protected against loss from excessively high charges,

the carriers should be equally protected from losses through undue low charges. The law itself says that carriers shall not charge "more or less" than their legally filed tariffs. We therefore ask equal legislative effect for both conditions. The shipper is protected by his bill of lading against more than the tariffs. We seek protection by legal agreements in the collection and retention of the rates in those bills of lading.

Senator Lindsay. Very much to my regret I did not hear the beginning of the discussion. If pooling be legalized, how far is the Interstate Commerce Commission qualified, and how far will it be able to determine whether the rates fixed by the pool or the railroads are reasonable?

Mr. Blanchard. Primarily, the rates are not fixed by pool agreements. Larger interests and factors decide them. Next, the tariffs are now upon reasonable bases. Since the Interstate act there have been no charges that average rates are excessive. The transportation heart of the United States, affording about 75 per cent. of its whole tonnage, lies between the Mississippi river and the seaboard, and north of the Ohio and Potomac rivers, and there is no question of reasonableness touching the rates therein.

When the present law took effect the first class rate from Chicago to New York was $1 00, and 75 cents in the reverse direction. Promptly the eastbound rate was made 75 cents with other classes in proportion. All reasonable reductions have thus occurred, with others that are unreasonable.

Comparison of our rates with those of European countries and with our own water rates, also prove the reasonableness of the national average of our rail rates. When we consider that such average is increased because of the greater rates in Colorado, Oregon, the South, etc., where gradients, sparsity of traffic, etc., justify them, we the more appreciate the rates greatly below the average, in the eastern area described.

Moreover, the proposition is that the reasonableness of rates be first passed upon by the commission, subject, in the event of their non-concurrence, to that appeal to the courts which is the right of every citizen in every other respect.

Senator Lindsay. That is what I desire to know, whether the commission is to be consulted as to the reasonableness of the rates?

The Chairman. That is the proposition.

Senator Higgins. The commission is to be the primary referee.

Senator Cullom. Did I understand you to say, (possibly it was Mr. Cowen who said it) that you would be willing to accept the bill pending in the House, which I understand contains a provision that the commission shall have absolute power over the question of rates without reference to the courts at all?

Mr. Blanchard. I do not think the commission ought to have that power, and that is the view I think the commission ought to take of it.

Resuming my argument.

In every other respect than pooling, the law followed the practical experiences and legislative precedents of other countries. In this particular they ignored them and the law has failed largely for that reason. Canadian railways may now pool their traffic in Canada taken in competition with American railways, as for example, from opposite Detroit eastwardly, and may also pool with competing steamboat lines on the great lakes. Competing lines may pool within our own state limits.

England has for forty years granted the powers we seek and with acknowledged benefits to its public interests. The present English Clearing House Act recognizes pools called "Joint Purses" as follows:

"Whereas, * * * * etc, for the purpose of affording in respect to such passengers, minerals, animals and goods *the same or like facilities as if such lines had belonged to one company, etc.*"

Prior to its purchase of its main railway lines, a committee of the German Empire reported as follows:

> "The uniting of the property, of the traffic, and of the management of the inland main lines under the strong arm of the state are the only efficient and proper means to solve the task."

France is districted and no railway rivalries are permitted within assigned territories.

Belgium owns its principal private lines, and has in effect pooled all their receipts.

Can the railway unity, which years of contest proved desirable as governmental measures in these countries, be wholly wrong here under lower rates duly protected by statute?

Permit brief reference to some reasons given for opposing such contracts.

It is said that former pools did not cure the evils treated or achieve their vaunted benefits. That discriminations continued despite them is true, but pooling did not cause them. They would have been greater without pools. New lines, at first deficient in comparative strength, facilities, equipment, etc., could not secure business at equal rates and therefore resorted to devices to get it. They sometimes declined to join pools until they had made tonnage records by drawbacks, etc. To retain their former business or due shares thereof, older lines met their rates. All this cutting was in violation of rate agreements and affected the stability of pools, but would be vastly lessened now with lesser railway construction. Through rates were also higher then than now and way rates yet higher than through rates. Through rate contests were therefore entered upon with less hesitation than would be felt now. The speculative element is now largely eliminated from management, rates are greatly lower and railway necessities would more sustain them. Moreover and principally, pools had not then the legal status we now seek.

Nevertheless, former pools were gradually restraining these evils and removing their causes. Professor Hadley said to the Commercial Club of Chicago last week, "Pools were better administered in '80 than in '77 and better in '86 than in '80."

To the charge that pool contracts advanced rates or restricted business or rivalry, I answer:

When the westward Trunk Line pool from New York went into effect (July 11, '77), the average of the westward and eastward class rates between Chicago and New York, was 71 cents per 100 pounds.

Nine years after, when the pool was discontinued, the average of the class rate was below 50 cents and is now about 46 cents, but greatly lower as the average upon the tonnage carried. Not only were rates thus reduced but tonnage increased. The westward tonnage of New York City increased from 715,808 tons in 1877 to 1,414,736 tons in 1893 and mark that the growth was greater per annum during the pooled years than since.

Although New York was pooled, Boston, Philadelphia and Baltimore were not, yet the business of New York indicated the larger increase.

In the last nine months of the pools eastwardly from Chicago, Peoria, St. Louis, Cincinnati, Louisville and Indianapolis, the

amount paid per pooled ton did not exceed nine cents, and the tonnage changed from its first routes in fifteen months was but 44,000 tons or 2.2 per cent. of the total, and without protests from shippers.

In my open letter to Senator Cullom some years since I proved these facts true of all the larger pools of the country.

The allegations of the opponents of pools were thereby disproven, which demonstrated that the pools did not seek to increase or even maintain former charges or else that they could not do so. Whichever the conclusion, the public did not incur the predicted dangers nor would they now if legal sanction were given to the plan pending, inasmuch as it concedes the rates to a statutory legal supervision which did not then exist.

It is erroneous and unintelligent to longer charge, as theorists have done, that pools are desired in order to "render competition impossible," "to establish monoply," "to preserve dividends on water stock," to "cause the railroads to increase their efforts to control the appointment of the Commission," and that they should therefore, be denied.

> * * * "so long as representatives of speculative interests have a voice in their management and not until all fictitious valuations are altogether banished from the equation and until the rates are brought under government control."

I do not believe you will deny to those who have done the most for the country, the last and the least consideration for their actual present status.

If capitalization bears any relation to rates, recent receiverships should have been avoided, notably in the cases of the Atchison, the Union Pacific and Northern Pacific Companies, all assisted by government, law, credit, lands, counsel and commissions. The real fact is that if the bonds of the New York Central, for illustration, were $500,000,000, and its stock $500,000,000 more, it would not probably change any tariff upon its line one cent per 100 lbs. nor would or could any pool produce an increase of its tariffs to that amount. Neither should its rates, being reasonable, be lessened if its present capital was reduced one-half. The only question is, is the service worth what is paid for it? No one is entitled to a reduction from its due rate value without its assent, or from any cause. Why should you buy transportation at less than its

value, more than flour? The President of the Pennsylvania Company has testified before the House that if his company could obtain the average rates charged by the London and Northwestern Company, his annual earnings would be increased $12,000,000.

The latest evidence thus compares our rates for '92 with those of other nations. England is not shown because its accounts are not so rendered, but American rates are currently estimated at not more than 65 per cent. of the average of British charges.

	For passengers *per mile.*	For freight *per ton per mile.*
United States,	*$2.14*	$ .97
Prussia,	2.99	1.32
Austria,	3.05	1.56
France,	3.36	1.59
Belgium,	2.25	1.39

Had our railways collected the lowest of the European charges for '92, we would have received $355,000,000 upon freight, and $15,000,000 from passengers—$370,000,000 in all—more than we did receive. These facts seem clearly to establish both our reasonable average of charge and the non-relation of capital to rates and that we cannot ignore *all* these convincing comparisons.

Senator Camden. What is the average freight rate in the United States?

Mr Blanchard. It was 97-100ths of one cent per ton per mile in '92 and it is worthy of mention that our country was never more prosperous than under former higher railway charges.

It is further surmised by a recent theorist that:

> "Every pooling combination of railroad companies for the maintenance of rates is a violation of common law."

This dictum refers to the mere maintenance of announced rates which the interstate law requires when it commands us to charge neither more nor less, which the Cullom Committee stipulated and which the Interstate Commission and all experts and honest traders have said are essentials. The railroads owe it to the public to make and maintain reasonable charges and the public then owes those rates to the railroad companies if they use their lines.

Rates being thus reasonable, a combination to maintain them is a public and corporate requirement, is compliant with law, a trade necessity, contributes to mercantile security, and is as much a public duty as that the Government shall announce and then maintain its tariffs.

This brings me to the parallels of governmental charges.

If, as claimed, transportation is a governmental function delegated to corporations but subject to National control, we are clearly entitled to the reasonable delegations of governmental powers, its officers would require to maintain the same charges.

Further, if it be proper that government proceed against infractions of its own tariffs, why should it be illegal for a railway to proceed against those who violate reasonable carrying tariffs similarly established for public justice.

We desire effective and not mere statutory conditions and law and joint organizations thereunder are necessary to good results. Organized stock exchanges are indispensable to uniform methods, fiscal regulations and values; produce exchanges and boards of trade to mercantile prices and standard methods, to sustain probity and prevent and defeat fraud. Marine enterprises require maritime exchanges. Chambers of commerce unite them all.

The New York Clearing House Association is a voluntary and non-incorporated federation of about sixty banks, organized in 1853, whose annual clearances are fifty times the gross receipts of our railways. It has proven a national bulwark.

Some concentrated authority must exist in every calling that is respected, definite and disciplinary, in order to reconcile diverse elements and announce just governing methods. They become needful public instrumentalities. The same principle requires the congress of states. That such bodies sometimes do wrong is no argument against them. When, however, railways adopt these tried and sound public principles and methods, legislation has not hesitated to denounce or prohibit them. If the government purchased the railways, their receipts would go into one general purse, and competition, so-called, would end.

Discriminations would cease as in the collection of import duties, postage and internal taxes. Government requires the railway companies to make uniform charges for the like carriage of mails, and does not ask that they be secretly rebated. Why

should it not aid us to similarly maintain our other rates, or, if such be competition, why should it not procure secret reductions in our mail charges? If government owned the railways and no adequate powers existed to compel the collections of uniform, just rates, Congress would promptly enact them. These are the conditions we find, the reasons we prove and the authority we seek, because it cannot be made an easier task to us who possess less authority.

If, *per contra*, our strifes are to continue unhelped by government to the extent it would assist its own co-ordinate branches under like conditions, and lower freight rates may continue to be given upon train loads of imported goods than to occasional shippers of one box, why should your customs laws longer deny the same large merchant corresponding preferential charges at one and the same port of entry?

If it be proper to stimulate undue strifes of communities and railways at New York, Boston and Baltimore, should not government vary its import charges at the same cities, if undue and unequal yielding is justifiable competition?

If government should justly charge to the moonshiner as much tax for his occasional gallon of whiskey as to the distiller's trust, and the buyer of ten thousand dollars' worth of postage stamps not less per stamp than to the occasional sender of a letter, should it not assist us to maintain like equalities of reasonable and non-preferential transportation charges?

Our railways collected in '92 seven and one-third times as much as our custom houses and three and one-quarter times more than our combined custom, postage and internal tax revenues. If governmental collections are justly uniform, is it not equally desirable to trade and essential to justice that the larger railway collections be also uniform with only legalized exceptions?

I quote some of the support which these unrefuted considerations have elicited from former opponents of pools.

None will doubt the devotion of Hon. John H. Reagan to his views of the public interest, as he, mainly, caused the pooling provision of the first interstate bill stricken out.

The following, written since he became a Texan Railway Commissioner, is, therefore, of exceptional interest:

> "Further study has caused me to believe that the section may be amended so as to benefit both the railroads and the people by allowing railroads to enter into traffic arrangements with one another."

Simon Stern, the able counsel of the New York Board of Transportation, entered upon their study with hostility, but afterwards said:

> "They (pools) have brought about a change for the better from that which prevailed before the pooling arrangements were made."

Hon. Chas. S. Smith, then Chairman of the Transportation Committee of the New York Chamber of Commerce and now its President, at first opposed them but afterward said:

> "Pooling certainly has some good points for shareholders and the public. It does prevent, to some extent, unjust discriminations. It aims to treat all alike."

The Boston Associated Board of Trade has recently endorsed pooling, for reasons ably set forth.

Senator Cullom. I received a letter from a gentleman from Boston stating that the Board of Trade had endorsed the Patterson bill.

Mr. Blanchard. I am not now familiar with the resolution.

Senator Cullom. I have never seen the bill, and I do not know what its provisions are; but I think I indicated a moment ago, generally, what were its provisions.

Mr. Blanchard. (Resuming) Permit a quoted word or two as to the legality of pool agreements.

Judge Deady, of Oregon, said before the law:

> "It is not apparent how a division of the earnings of two roads can concern or affect the public, so long as the rate of transporation on them is reasonable."

Supreme Judge Blodgett, of New Hampshire, has decided *since* the law that if such an agreement be a

> "reasonable business arrangement which does not cause unreasonably high charges or violate any duty which the companies owe to the public, it should be sustained and enforced by the courts."

Nothing in law prevents forwarders from combining their traffic to depress rates and incite railway strife, but railways are denied like rights to protect their reasonable rates and stop undue strife, both between themselves and their shippers. Mr.

Chairman, this question also touches the country's credit next to its own bonds. It is startling that twenty-three per cent of its railway mileage and one-sixth of its railway capital are now under receivers. National legislation contributed to this condition and should help to correct it. Your current endeavors to restore and secure business prosperity should reasonably include the consideration of the railway interest as the largest of the country and the most important permanent factor of national development, credit and facility.

Senator Cullom. May I ask whether the Interstate Commission has not made a report classifying the roads into districts and showing that those classes, I believe all of them, made more money in 1893 than before? Their earnings have increased, while their current expenses have also increased a litttle.

Mr. Blanchard. If I had the time to go into the matter and had my data I could explain that idea.

The *Financial Chronicle* showed its inaccuracies. I have a letter from Hon. Stuyvesant Fish, President of the Illinois Central Company, referring to one part of that question, from which I make extracts:

> "The Interstate Commerce Commission in their last report * * * * endeavor to show that railroad interests have not been injured by the Act, and that railway earnings were larger in the year ended June 30, 1893, than in the preceding year.
>
> I * * * * would like to see the commission's reports, and especially those of their statistician, called to account seriously. The fundamental fallacy of their figures arises from the practice (for which railroad managers are responsible) of calling the gross sum received from traffic, "Earnings." In Great Britain and other civilized countries, except only the United States, this sum is correctly denominated "Receipts." It can no more be called "Earnings" than could a merchant's gross sales of goods be called "Profits." The Illinois Central some years since adopted the term "Receipts" in their annual reports to stockholders, and have latterly substituted that term for "Earnings" wherever it occurred in their report to the Interstate Commerce Commission. This had not prevented the statistician from using the misleading term "Earnings," in his preliminary report for 1893, for instance.
>
> A great part of the feeling against railroads has arisen from these grossly exaggerated statements of their earning capacity.
>
> Another point more nearly affecting the good faith of the statistician's reports is his including "Taxes" with "Fixed Charges," under the general heading "Deductions from Gross Earnings other than operating Expenses." As the Illinois Central paid, during the year ended June 30, 1893, $1,024,896 in taxes, Professor Adam's manipulation of our figures puts me in the unenviable light of having an official government document, based on sworn reports, show the company's fixed charges by so much greater than the amount stated in our annual report to our stockholders. * * * * The American Association of Railway Accounting Officers have all along protested against the inclusion of taxes among fixed charges. When you consider that with us taxes absorb over 5 per cent of our "Gross Receipts," and more than one seventh of the excess of those receipts over operation expenses (which excess constitutes the "Earnings of the Railway"), and more than two-fifths of the dividend upon the $50,000,000 of full paid stock (which dividends forms the "Earnings of the Share Capital"), you can see why I feel strongly on the subject."

Senator Cullom. I have not attempted to analyze the report.

Mr. Blanchard. It depends entirely upon the use which is made of figures. It is in that and other respects that the report is misleading.

At the dinner of the Commercial Club in Chicago last week, Mr. H. H. Porter, Chairman of the Chicago & Eastern Illinois Ry. Co., ably illustrated this question substantially as follows:

Simultaneously with the construction of railways began that of parallel telegraph lines, one system for the transportation of persons and property, the other for thought and intelligence.

As telegraph companies formed alliances they led to expensive managements and unnecessary offices as in the railways. The telegraphs then entered into what was and is called competition. They had contests in legislatures, in rates and in finance.

They increased their stock. They involved railway companies in thir policies and wars. At last Mr. Gould's efforts substantially consolidated them. The railroads could only amalgamate continuous lines, the telegraphs could combine parallel lines. You remember the hue and cry when Mr. Gould obtained the power by purchase and proxies to do all this. I well recall that the press and trades bodies stated that he could thereby establish an espionage over every business he might desire information about, and that he might make combinations and fortunes so gigantic as to threaten the republic. What was the actual result? He proceeded to desirable economics, thereby helped to reduce rates and produce uniformity, and your own body has had proofs of the inviolability of messages.

Does this harmonious telegraph policy unaided by law or the

present railway situation under law, represent the best commercial conditions?

This strong parallel confirms our claims for the advantages of putting competing roads under like comprehensive management, as far as pools will do it. There is no law preventing higher telegraph charges than those which now prevail, yet they have gone down instead until we send dispatches with unequalled celerity and average cheapness. Aside from special charges made to the press and to the government, and for night transmission, the charges are uniform and public and users do not complain of them or discriminations in them. Substantially, we seek these conditions to the extent of a right of agreement with parallel transporters in order to maintain just charges duly guarded by those regulative powers which have proven wise in other countries and, in the telegraph instance, in our own.

The ogre of a pool which appears so vividly to some persons would then dwindle away, and we would so rapidly enter into relative railway peace and non-discrimination that it would create public astonishment that for seven years the prohibition of pooling had been permitted to stand unrepealed. Finally, there were over thirty measures pending in the last congress for the restriction of railways and but one for their relief and that one, now before you again, was then unhappily defeated.

There were also many state and municipal measures looking to reduced passenger fares, freight rates, pro rata laws, bills of lading, grade crossings, speed of trains, safety appliances, responsibility for accidents, better protection of labor, etc., each and all intended to decrease our net earnings or increase our responsibilities.

I therefore plead for more commercial and legislative consideration for our interests upon the following recapitulated grounds:

First. That charges upon the national tonnage average greatly less than for similar rail transportation elsewhere, being about 73 per cent of the lowest foreign rates.

Second. That our present charges do not average one-half those of fifteen years ago.

Third. That these results have been achieved without national enactment as to rates beyond the section 5 of the law.

Fourth. That no interstate tariff has been reduced by judicial decree.

Fifth. That with decrease of charges we give increased speed, responsibility, security of transportation, absorption of lateral charges, stoppage of transfers, etc., unequalled elsewhere.

Sixth. That with the lower rates and quicker freight transit, our railway labor is paid the highest railway wages of the world.

Seventh. That to call railway contests competition is a misnomer.

Eighth. That railway taxation is being constantly increased.

Ninth. That to our railways have been due the unparalleled development of the nation and the extension of its foreign commerce.

Tenth. That we only seek reasonable rates which we cannot exceed if we would, and propose to submit them primarily to a Governmental Commission.

Eleventh. That we can look only to law to restore the safeguards it took away; and in restoring them railway experience is entitled to prior consideration when coupled with due public protection.

Twelfth. That we are entitled to all this as the largest interest of the country.

Thirteenth. Because the law has failed not only in business but legal aspects, and disregard for it is increasing.

So far as national law seeks to cure conditions to which the public may demur with equal reason, we should aid to correct them also. If the law is to remain it should be strengthened and made adequate by mutual and comprehensive railway, commercial and legislative action. It should be made vital and not void.

We should repeal injustice and adhere to mutual right. The alternative is yet more railway consolidations.

Senator Wilson. A good many complaints come to me in correspondence resulting from this state of facts: For instance, take a road that is constructed through Iowa from the Missouri to the Mississippi River. It is extended through Illinois to Chicago. The road has been constructed by independent corporations because the companies are in different states and have

their charters from the two states. I frequently hear from the people of cases of this character. There is a town in Iowa—it may be well towards the western part of the state or it may be in the central part—some of the inhabitants of which are business men who ship freight to Chicago and receive freight from Chicago. There are duplicate bills of lading, one over the Iowa part of the line to its eastern terminus on the Mississippi River and another from there to Chicago over the Illinois part of the line. There is no obedience to any principle involved in the pooling system observed in that shipment. A much higher rate is charged on the Iowa part of the line, and then the local rate is charged on the Illinois part of the line, which makes a very unjust discrimination, it is alleged, as to those points in the interior of the state which are not pooling centers, or points where the pooling system applies. Has that feature of the case ever been brought to your attention?

Mr. Blanchard. The roads I represent run east from Chicago, Peoria and St. Louis. The lines of which you have spoken are not among them nor am I familiar with their usage in the respects you cite. In our territory we have nothing of that kind that I can recall. Indeed, we have gone to the opposite.

If a man ships to a given point and wishes to re-ship, we reduce the first and second local rates so that he may forward at the cheaper through rate instead of higher charges made up of two local rates. My general observation as to the cases you mention, is that the charges from Iowa points to the Mississippi River are those authorized by Iowa law. They may be higher or lower per mile than those east of that river, fixed by the Illinois Commission, or higher than the proportion of through rates. This does not pre-suppose wrong. The shipments you refer to are presumably first made to the Mississippi River with a view to deciding there whether the freight shall be there delivered or re-shipped therefrom. Grain may there reach the first elevator and owners may then determine whether they will ship to St. Louis, farther south by river or to Chicago, New York or elsewhere. Therefore, much property is sent to the river at local rates. I have never heard, when a shipper elected in Iowa to ship direct to Chicago or the farther east, that procedure you cite prevails.

Senator Wilson. I have had a number of instances of that kind brought to my attention, and in going about Iowa I hear parties make the same complaint.

Mr. Blanchard. I wish I were better informed in my answer. If a higher rate were charged from a point east of Des Moines to Chicago than from Des Moines to Chicago, the right of enquiry and reasonableness now exists and should be exercised by the Iowa authorities or the National Commission. If a pool existed at Des Moines it would correct such conditions, so that any local shipper direct to Chicago would not be charged more for a shorter haul than from Des Moines to the same point.

Senator Wilson. Still that is the fact.

Mr. Blanchard. I do not know. If it exists, it is probably in so few instances that they constitute exceptions.

Senator Higgins. There are cases where a carload of steers, cattle, going from Chicago to Wilmington, Delaware, are taken at the regular through rates, then from Wilmington, Delaware, say to Delaware City, or some other point, there would be a local rate charged very much greater in its proportion than the one from Chicago to Wilmington.

Mr. Blanchard. That is universal.

Senator Higgins. And that shipment would not be affected by pooling?

Mr. Blanchard. Not in any way. The conditions to and from Wilmington would be unchanged. When a party ships from Chicago he has the option of shipping to Wilmington or to Delaware City. He presumably knows the rates to and from that point and makes his choice.

Senator Higgins. If he asked for a through rate to Delaware City, could he get it?

Mr. Blanchard. Yes.

Senator Higgins. I thought it was refused.

Mr. Blanchard. There may have been no published tariff from Chicago to Delaware City, because such universality would mean countless thousands of tariffs, but we get such rates for our shippers always.

Senator Higgins. Is such a rate given from a point like

Buffalo to Wilmington or Delaware City as well as from Chicago?

Mr. Blanchard. I am not familiar with the facts.

Senator Higgins. Your jurisdiction does not include Buffalo?

Mr. Blanchard. Not from Buffalo east, but impracticable or excessively circuitous routes would not be represented by through tariffs.

Senator Higgins. I do not mean circuitous.

I wish to understand your argument in respect to the figures you used a while ago as to the difference of rates in England and the continent of Europe as compared with those in the United States. I believe the rate here is ninety-seven hundreths of one cent per ton per mile.

Mr. Blanchard. I shall be glad to make a copy of those figures for you.

Senator Higgins. Is it your argument that if pooling were allowed greater revenue raised would be for the railroads from the traffic?

Mr. Blanchard. No, except by the maintenance of tariffs. The tariffs would not be increased.

Senator Higgins. What was the point you undertook to make in that respect?

Mr. Blanchard. That those earnings represented a very low standard and average of rates, and *that* being true, we simply desire to preserve them without reductions.

Senator Higgins. Why did you refer to the larger returns received by European companies?

Mr. Blanchard. To show *first*, that our rates average unreasonably low from national standpoints. *Second*, that the rates do not bear the slightest relation to capitalization, and *third*, that our rates are so low compared with other nations, that we are entitled to government aid to help us to charge and maintain them impartially to all.

Senator Higgins. Is, or is not their present relative lowness due to the fact that the Interstate Commerce law prohibits pooling?

Mr. Blanchard. I have stated I think it is so in some respects, because the rates, say from Kalamazoo and many

stations to New York at the passage of the Act might legally have been more than from Chicago.

The law forbade that condition and therefore reduced our average rate. All over the United States the railroad companies, with exceptions of sparsely settled countries like the south, the mountain region beyond Denver, etc., etc., reduced local rates to meet the long and short haul clause of the law. When contests formerly occurred by which the tariff was, say twelve and one-half cents per hundred pounds on grain from Chicago to New York, it included sending cars to elevators in Chicago and three cents for lighterage in New York, leaving approximately, say eight cents for carriage, interest, dividends, etc. That low rate did not always extend to local stations. Now such open reductions generally do and the law has reduced our average freight rates accordingly.

Senator Higgins. Would the legalization of joint contracts, as you designate them, interfere with the application of the long and short haul clause?

Mr. Blanchard. Not at all. It would strengthen it by better maintaining rates at the larger initial points.

Senator Higgins. That clause would remain?

Mr. Blanchard. Yes.

Senator Higgins. You would not repeal it?

Mr. Blanchard. I think these things ought to remain, viz.:

The prohibitions against discriminations, the injunctions as to the reasonableness of rates, the long and short haul clause, and the administrative powers of the Commission. That is all the country requires. Then give us the pooling machinery to carry them out and we will do it jointly.

Senator Wilson. I wish to suggest just there, and I think it is a practical suggestion, that if the management of railroad affairs in the country, including the pooling machinery and all that, will give attention to the subject I have suggested and will evolve a remedy for that complaint, they will do more to satisfy the public than any other one thing that I know of. I suggest that you give that particular feature of the case study and examination and see if you can not evolve something in your pooling arrangements, etc., which will meet the complaint that

is made, because if you can not, then there will be an insistance for further legislation in this regard.

Mr. Blanchard. I shall be glad to refer it to the proper parties. There does not exist to my knowledge in the territory I represent, an instance of the kind you have mentioned, except under the conditions Senator Higgins before referred to. I am not only Commissioner of the Central Traffic Association, but Vice-Chairman of the combined association with the Trunk Lines as well, and in this respect I may speak for both.

Mr. John K. Cowen. May I ask Mr. Blanchard a question?

The Chairman. Yes.

Mr. Cowen. In reference to Mr. Wilson's inquiry, I notice that in the Osborne case the shipper from Scranton, Iowa, shipped his goods first to Chicago. He did not know that he could get a through rate from Scranton to Boston or New York. Now, I can conceive how that could give rise to complaints of the exact kind the Senator from Iowa has been speaking of, yet as a matter of fact the evidence shows that he could have gotten a through rate. He shipped first to Chicago and then he had the Chicago rate to add to it to Boston.

Senator Wilson. In the cases I have referred to there was a refusal to give a through rate.

Mr. Cowen. There was not in the case to which I have referred.

Senator Wilson. They insisted upon giving the two local rates. That is a discrimination against all the interior points.

Senator Cullom. If Mr. Blanchard is through I will move that the committee adjourn.

Mr. Blanchard. Before you adjourn, I hope the gentlemen of the committee will accept my acknowledgements for the patience and courtesy with which they have received my remarks.

At 12:30 o'clock P. M. the committee adjourned.

53D CONGRESS,
2D SESSION.

S. 1534.

IN THE SENATE OF THE UNITED STATES.

JANUARY 31, 1894.

MR. GORMAN introduced the following bill; which was read twice and referred to the Committee on Interstate and Commerce.

A BILL

To amend an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

"SEC. 5. Except under the condition herein prescribed, it shall be unlawful for different and competing common carriers, subject to the provisions of this Act, to enter into any contract, agreement, or arrangement, for the division or apportionment among themselves of the whole or any portion of their traffic, or any of their gross or net earnings; and each day of the continuance of any such contract, agreement, or arrangement, except under the conditions hereinafter prescribed, shall be deemed a separate offense: *Provided, however,* That under the following conditions it shall be lawful for such common carriers to enter into such contracts, agreements, or arrangements, enforceable between the parties thereto, that is to say: All such contracts, agreements, or arrangements shall be in writing, and shall be filed with the Commission appointed under the provisions of this Act and shall become lawful and forceable between the parties thereto only upon the approval thereof by said Commission or upon an entry of an order of court, as herein provided. All such contracts shall be deemed approved by the

Commission at the expiration of ten days from the filing thereof, without the Commission entering any formal order of approval, unless the Commission makes an order, formally withholding its approval. Such approval shall be withheld whenever said Commission shall find that the operation of any such contract will result in unreasonable rates, unjust discrimination, inferior service to the public, or is otherwise in contravention of any of the provisions of this Act. Orders and findings of the Commission, giving or withholding its approval of any such contract, shall be subject to review by any circuit court of the United States sitting in equity in a judicial district, in which any party to the contract has its principal office, upon petition filed by any party to such contract, or by any person or organization affected thereby and authorized to make complaint under section thirteen of this Act, stating the facts and the action of the Commission relative to such contract, and making the Interstate Commerce Commission, under that name, a party defendant; said court shall proceed to hear and determine the matter speedily, as a court of equity, in the manner provided by section sixteen of this Act, and shall make such order or decree as may be just and equitable, determining whether the contract in question shall be lawful and enforceable as neither operating to produce the results aforesaid or being otherwise in contravention of the provisions of this Act. From the decree or order of said circuit court, an appeal shall lie to the Supreme Court of the United States, and shall be advanced for hearing therein, as appeals in which the United States are a party. It shall be the duty of the Commission to observe the working, operation, and effect of every such contract or agreement upon the transportation and business of the country and of the several contracting parties, making such examinations and investigations in relation thereto as the Commission may deem necessary, and if, and whenever the Commission shall be of the opinion that the operation of any such contract results in unreasonable rates, unjust discrimination, or inferior service to the public, or is otherwise in contravention of any of the provisions of this Act, the Commission shall issue an order, directed to the several parties to such contract, specifying the particulars in which the operation of such contract produces such results or is otherwise in contravention of any of the provisions of this Act, and requiring that such con-

tract or the practice under it be modified, changed, or corrected, as therein specified. If the parties to such contract shall not comply with the requirements of such order within such reasonable time as may be fixed therein, then the Commission shall proceed to enforce such order as herein provided for the enforcement of the other findings and orders of the Commission. It shall be the duty of the proper district attorney, under the direction of the Attorney-General of the United States, whenever requested by the Commission, to appear in every such cause for the Commission, and all costs and expenses so incurred shall be paid out of the appropriation for the expenses of the courts of the United States."

53D CONGRESS,
1ST SESSION.

H. R. 3377.

IN THE HOUSE OF REPRESENTATIVES,

SEPTEMBER 22, 1893.

Referred to the Committee on Interstate and Foreign Commerce and ordered to be printed.

MR. PATTERSON introduced the following bill:

A BILL

To amend an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be amended by adding thereto the following:

"The word 'line,' as used in this act, shall be construed to mean a physical line, whether such line be one railroad or two or more connecting railroads, or part railroad and part water, when both are used under a common control, management, or arrangement, express or implied, for a continuous shipment.

"Each railroad and each waterway, and every part of each railroad and each waterway composing any such line, shall be deemed a part of such line, and transportation over the whole or any part or parts of such line shall be deemed to be transportation over the same line, whether the transportation service be rendered by a single carrier or by two or more carriers.

"The words 'any common carriers,' as used in this act, shall be construed to mean one or more than one common carrier as the case may be and the context require."

SEC. 2. That section five of said act be amended so as to read as follows:

"SEC. 5. Except under the conditions hereinafter prescribed, it shall be unlawful for different and competing common carriers

subject to the provisions of this act to enter into any contract, agreement or arrangement for the division or apportionment among themselves, or with others, of the whole or any portion of their traffic or of their gross or net earnings. And each day of the continuance of any such contract, agreement, or arrangement, except under the conditions hereinafter prescribed, shall be deemed a separate offense: *Provided*, That under the following conditions it shall be lawful for such common carriers to enter into such contracts, agreements, or arrangements enforceable between the parties thereto; that is to say:

"First. All such contracts, agreements, or arrangements shall be in writing and shall be filed with the Commission appointed under the provisions of this act.

"Second. Such contracts, agreements, or arrangements shall become lawful only upon and after approval by said Commission, and shall remain lawful and enforceable between the parties thereto only during such time and so long as the said Commission shall fail to withdraw their approval thereof and to notify the parties thereto of a day upon which the same shall cease to be lawful. And when the Commission shall withdraw their approval of any such contract, agreement, or arrangement and shall so notify the parties thereto the same shall become and be unlawful and cease to be enforceable between the parties thereto on and after the day specified in such notice.

"And Congress may at any time alter, amend, or repeal so much of this section as makes such contracts, agreements, or arrangements lawful under the above conditions."

SEC. 3. That section ten of said act as amended March second, eighteen hundred and eighty-nine, be further amended by adding the following clauses thereto:

"Whenever any common carrier subject to the provisions of this act is a corporation, such corporation may be prosecuted as for a misdemeanor under any of the foregoing provisions of this section, and upon conviction shall be subject for each offense to a fine not exceeding five thousand dollars."

"Whenever an indictment shall be found under the provisions of this act against a corporation, the service of any writ or other process thereupon, or for the prosecution thereof, shall be sufficient if a copy of such writ or process be delivered to and left

with any officer or agent of such corporation found in the judicial district wherein such indictment may be found."

SEC. 4. That section thirteen of said act be amended by adding thereto the following:

"Testimony given orally before the commission, or any one or more members thereof, in the course of any investigation or inquiry made or instituted under the provisions of this section, shall be taken down by stenography or otherwise as it is given, and before the decision of the Commission is announced shall be written out and filed with the papers relating to the complaint, investigation, or inquiry."

SEC. 5. That section sixteen of said act as amended March second, eighteen hundred and eighty-nine, be further amended by adding the following:

"A copy of all the pleadings, papers, exhibits, and testimony (whether documentary, or in the shape of depositions, or taken down as orally given) filed with or adduced before the Commission in the course of any investigation of a complaint, or in the course of any inquiry instituted by the Commission on its own motion, shall, whenever application is made to a court, as above provided, alleging violation or disobedience of the order or requirement of the Commission, be certified by the secretary of the Commission to such court.

"In hearing and determining, pursuant to the provisions of this section, any matter not involving the right to a trial by jury, neither the court nor any person appointed by the court to prosecute inquiries into such matter shall hear or consider any matter of fact offered in evidence before such court or person by any party who, with knowledge of such fact, failed to offer it before the Commission, unless the court be satisfied that the materiality of such fact and its bearing on the decision of the Commission could not reasonably have been understood or foreseen prior to such decision."

53D CONGRESS
2D SESSION.

H. R. 5665.

IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 8, 1894.

Referred to the Committee on Interstate and Foreign Commerce and ordered to be printed.

Mr. STORER introduced the following bill:

A BILL

To amend an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the word "line" as used in the Act entitled, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and in acts amendatory thereof, shall be construed to mean a physical line, whether such line be one railroad or two or more connecting railroads, or part railroad and part water. Each railroad and each waterway, and every part of each railroad and each waterway composing any such line, shall be deemed part of such line, and transportation over the whole or any part or parts of any such line shall be deemed to be transportation over the same line, whether the transportation service be rendered by a single carrier or by two or more carriers. Any common carrier or carriers engaged in the transportation of passengers or property over a line of railroad, or a line which is part railroad and part water, between points or places described in the first section of said "Act to regulate commerce" shall be deemed subject to the provisions

of said Act as amended. The words "any common carrier," as used in said Act as amended, shall be construed to mean one or more than one common carrier as enforcement of the provisions of said Act as amended may appear to require.

SEC. 2. That section five of said Act be amended so as to read as follows:

SEC. 5. That except under the conditions hereinafter prescribed, it shall be unlawful for different and competing common carriers subject to the provisions of this Act to enter into any contract, agreement, or arrangement for the division or apportionment among themselves, or with others, of the whole or any portion of their traffic or of their gross or net earnings. And each day of the continuance of any such contract, agreement, or arrangement, except under the conditions hereinafter prescribed, shall be deemed a separate offense: *Provided*, That under the following conditions it shall be lawful for such common carriers to enter into such contracts, agreements, or arrangements enforceable between the parties thereto; that is to say:

"First. All such contracts, agreements, or arrangements shall be in writing and shall be filed with the commission appointed under the provisions of this Act.

"Second. Such contracts, agreements, or arrangements shall become lawful only upon and after approval by said commission, and shall remain lawful and enforceable between the parties thereto only during such time and so long as the said commission shall fail to withdraw their approval thereof and to notify the parties thereto of a day upon which the same shall cease to be lawful. And when the commission shall withdraw their approval of any such contract, agreement, or arrangement and shall so notify the parties thereto the same shall become and be unlawful and cease to be enforceable between the parties thereto on and after the day specified in such notice.

"And Congress may at any time alter, amend, or repeal so much of this section as makes such contracts, agreements, or arrangements lawful under the above conditions."

SEC. 3. That section 10 of said Act as amended March second, eighteen hundred and eighty-nine, be further amended by adding the following clause thereto:

"Whenever any common carrier subject to the provisions of

this Act is a corporation, such corporation may be prosecuted as for a misdemeanor under any of the foregoing provisions of this section, and upon conviction shall be subject for each offense to a fine not exceeding five thousand dollars.

"Whenever an indictment shall be found under the provisions of this Act against a corporation, the service of any writ or other process thereupon, or for the prosecution thereof, shall be sufficient if a copy of such writ or process be delivered to and left with any officer or agent of such corporation found in the judicial district wherein such indictment may be found."

That so much of section ten of said Act as provides for punishment by imprisonment is hereby repealed.

SEC. 4. That section thirteen of this Act be amended by adding thereto the following:

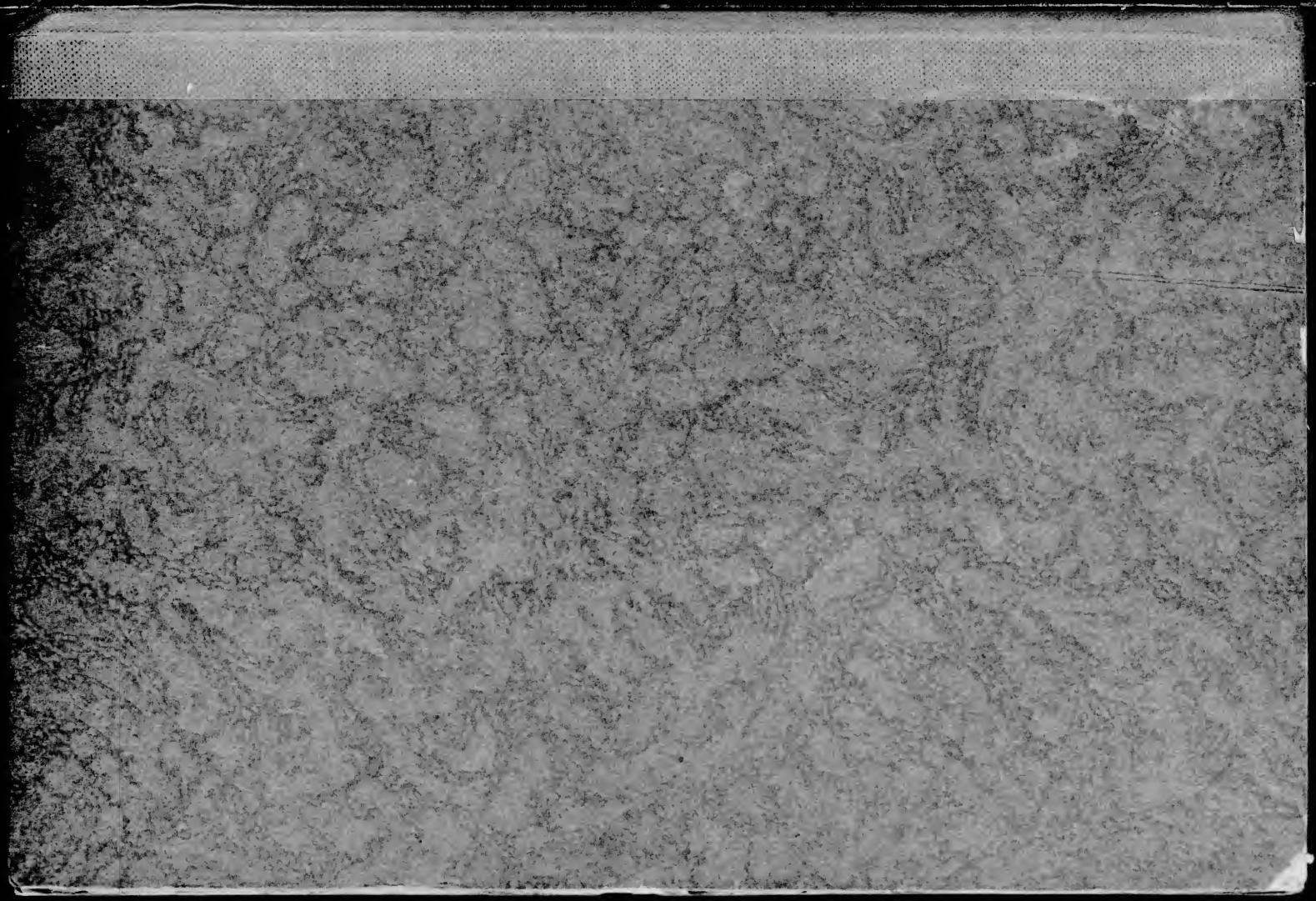
"Testimony given orally before the commission, or any one or more members thereof, in the course of any investigation or inquiry made or instituted under the provisions of this section, shall be taken down by stenography or otherwise as it is given, and before the decision of the commission is announced shall be written out and filed with the papers relating to the complaint, investigation, or inquiry."

SEC. 5. That section sixteen of said Act as amended March second, eighteen hundred and eighty-nine, be further amended by adding the following:

"A copy of all the pleadings, papers, exhibits, and testimony (whether documentary or in the shape of depositions, or taken down as orally given) filed with or adduced before the commission in the course of any investigation of a complaint, or in the course of any inquiry instituted by the commission on its own motion, shall, whenever application is made to a court, as above provided, alleging violation or disobedience of the order or requirement of the commission, be certified by the secretary of the commission to such court.

"In hearing and determining, pursuant to the provisions of this section, any matter not involving the right to a trial by jury, neither the court nor any person appointed by the court to prosecute inquiries into such matter shall hear or consider any matter of fact offered in evidence before such court or person by any party who, with knowledge of such

fact failed to offer it before the commission, unless the court be satisfied that the materiality of such fact and its bearing on the decision of the commission could not reasonably have been understood or foreseen prior to such decision."



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